

*State Employment Security Agency (SESA)*—means the State agency which exercises control over the Unemployment Insurance Service and the Employment Service.

*Subgrantee*—means any person, corporation, partnership, public agency, or other entity, excluding private for profits concerns, which enters into a grant with the Native American Grantee.

*Underemployed persons*—means:

- (a) Persons who are working part-time but seeking full-time work; or
- (b) Persons who are working full-time but whose current annualized wage rate (for a family of one), or whose family's current annualized income, is not in excess of:
  - (1) The poverty level, or
  - (2) 70 percent of the lower living standard income level.

*Unemployed persons*—means individuals who are without jobs and who want and are available for work. The determination of whether individuals are without jobs shall be made in accordance with the criteria used by the Bureau of Labor Statistics of the Department of Labor in defining individuals as unemployed.

## Subpart B—Designation Procedures for Native American Grantees

### § 632.10 Eligibility requirements for designation as a Native American grantee.

(a) All funds specifically identified in the Act as reserved for the benefit of Indian and Native American participants shall be disbursed by the Department only to Native American grantees designated pursuant to this subpart. Except for FY 1984, designation will be for a period of two years.

(b) To be designated as a Native American grantee, an applicant must have:

- (1) A governing body;
- (2) For new grantees, an Indian or Native American population within its designated service area of at least 1,000 persons;
- (3) The capability to administer an Indian and Native American employment and training program. For purposes of this paragraph, "capability to

administer" means that the applicant can demonstrate that it possesses, or can acquire the managerial, technical, or administrative staff with the ability to properly administer government funds, develop employment and training opportunities, evaluate program performance and comply with the provisions of the Act and the regulations. In judging the applicant's request for designation, consideration shall be given to factors such as:

- (i) Previous experience in operating an effective employment and training program serving Indians or Native Americans;
  - (ii) The number and kind of activities of similar magnitude and complexity that the applicant has successfully completed;
  - (iii) Information from other Federal agencies regarding program performance or financial and management capability.
- (c) The Department will not designate an organization in cases where it is established that:

(1) The agency's efforts to recover debts (for which three demand letters have been sent) established by final agency action have been unsuccessful, or

(2) Fraud or criminal activity has been proven to exist within the organization, or

(3) The amount under the funding formulas will not total at least \$120,000 in all JTPA funds for the first year of the two-year designation period. In the event that this amount cannot be determined at the time of the Department's decision on the request for designation, the amount shall be estimated in part by reference to the funding levels for Native American programs for the prior fiscal or program year. An applicant for designation shall be designated notwithstanding the limitation in this paragraph of this subsection if it demonstrates that:

- (i) It has or expects to receive a combined total of \$120,000 in funds or services for the first year of the 2-year designation period from JTPA and other human resource development programs, including but not limited to those providing for employment, education, vocational education, health, social or similar services; or

(ii) It is recognized and directly funded by Federal agencies, such as the Indian-serving agencies within the Departments of the Interior, Health and Human Services or Education as the primary service delivery organization for the provision of human resource development services to Indians or Native Americans within the organization's customary service area. This provision shall be interpreted consistent with the Federal policy established in Pub. L. 96–638, the Indian Self-Determination Act; or

(iii) It has demonstrated successful operation of an employment and training program at a level below \$120,000 within the previous two years. For this purpose, success is the ability to adequately meet planned goals and stay within the grant's cost limits.

(4) For a consortium to be designated, it must submit the consortium agreement which meets the requirements of this subpart.

(d) Types of eligible Native American grantees:

(1) *Indian tribe, band or group.* The Department shall designate as a Native American grantee an Indian tribe, band or group which meets the requirements in paragraphs (b) and (c) of this section.

(2) *Alaskan Native entity.* The Department shall designate as a Native American grantee an Alaskan Native entity as defined in the Alaskan Native Claims Settlement Act which meets the requirements in paragraphs (b) and (c) of this section.

(3) *Hawaiian Native grantee.* The Department may designate as a Native American grantee any private nonprofit organization or public agency representative of the Native Hawaiian community which meets the requirements in paragraphs (b) and (c) of this section and which the Department determines will best meet the needs of Native Hawaiians.

(4) *Public or private agencies.* The Department may designate as a section 401 grantee a private nonprofit organization or public agency which meets the requirements in paragraphs (b) and (c) of this section to serve areas where there are significant numbers of Indians or Native Americans, but where there are no Indian tribes, bands or

groups, Alaskan Native entities or Hawaiian sponsors or consortia of such sponsors eligible for designation.

(5) *Consortium grantees.* The Department may designate as a Native American grantee a consortium of any of the types of grantees described in paragraphs (c), (1), (2), (3), and (4) of this section which may or may not be independently eligible. All such consortia shall meet the following requirements, in addition to the requirements in paragraphs (b) and (c) of this section:

(i) All the members shall be in geographic proximity to one another. A consortium may operate in more than one State.

(ii) An administrative unit shall be designated for operating the program, which may be a member of the consortium or an agency formed by the members. The administrative unit shall be delegated all powers necessary to administer the program effectively, including the power to enter into contracts and subgrants and other necessary agreements, to receive and expend funds, to employ personnel, to organize and train staff, to develop procedures for program planning, to monitor financial and program performance, and to modify the grant agreement through agreement with the Secretary. The right of reallocating funds within the consortium area shall be reserved to the consortium's members.

(iii) The consortium shall be the Native American grantee. The consortium agreement shall be signed by an official or officials of each member of the consortium authorized to enter into a binding consortium and shall specify that each member shall be liable jointly or separately for claims established against the grantee. Additional standardized requirements for consortium agreements will be communicated to grantees under separate order.

(e) In the situation where the Department does not designate Indian tribes, bands or groups or Alaska Native groups to serve such groups, the Department shall, to the maximum extent feasible, enter into arrangements for the provision of services to such groups with other types of section 401 grantees which meet with the approval of the Indian tribes, bands, groups or

Alaska Native groups to be served (section 401(d)). In such cases, the Department shall consult with the governing body of such Indian tribes, bands, groups or Alaska Native groups prior to the designation of a Native American grantee.

(f) In designating Native American grantees to serve groups other than those in paragraph (e) of this section, such as nonreservation Indians and Native Hawaiians, the Department shall, whenever feasible, designate grantees which are directly controlled by Indian or Native American people. Where it is not feasible to designate such types of grantees, DINAP shall consult with Indian or Native American-controlled organizations in the area with respect to the designation of a Native American grantee. Where a private nonprofit organization is designated, DINAP shall require any such grantees not directly controlled by Indian or Native American people to establish a Native American Employment and Training Planning Council and to implement an Indian preference policy with respect to hiring of staff and contracting for services with regard to all funds provided pursuant to this part (sec. 7(b) of the Indian Self-Determination and Education Assistance Act).

#### **§ 632.11 Designation of Native American grantees.**

(a) When designations are required and the potential grantee is not under a Master Plan agreement, an applicant for designation as a Native American grantee shall submit a notice of intent to apply for funds. Such notices of intent shall be postmarked by January 1 and be submitted to the Division of Indian and Native American Programs (DINAP), Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC. 20213. Notices of intent may also be delivered to that office in person not later than the close of business on January 2 or the first business day of the designation year. Such notices of intent to apply shall be submitted on Standard Form 424 as a preapplication for Federal assistance. For applicants not under an active Master Plan agreement or the Master Plan agreement is due to expire during the year of des-

ignation, the following information shall be included in the notice of intent:

(1) Evidence that the applicant meets the requirements for a Native American grantee contained in § 632.10.

(2) A description of the geographic area or areas which the applicant proposes to serve, together with the Indian and Native American population in such areas, to the extent known. The description must include a list of States (if more than one), in alphabetical order, and under each State, a list of counties in alphabetical order, followed by a list of tribes, bands or groups (if any) in alphabetical order. If the applicant was a Native American grantee for the period prior to the one which is being applied for, the applicant must also list any counties and tribes, bands or groups which are being added to, or deleted from, the previous fiscal year's service area;

(3) A description of the applicant's organization, including the legal status of the applicant, the process of selection of the governing body, the duties and responsibilities of the governing body, and in the case of private nonprofit organizations, a copy of the articles of incorporation;

(4) Evidence of the applicant's capability to operate an Indian or Native American employment and training program, including a statement of the applicant's past successes in operating programs for Indians or other Native Americans and a statement of the applicant's experience in managing the types of programs and activities allowable under the Act;

(5) A description of the planning process including employer involvement which the applicant proposes to undertake in developing a plan for the use of funds;

(6) Information related to a grantee's administrative responsibility. The DOL will conduct an independent review to determine whether each applicant is currently delinquent in repaying any DOL claims or has any outstanding administrative problems. Applicants are, therefore, encouraged to submit any documents related to these factors including documents and correspondence previously submitted to DOL. Submittal of such materials will enable